UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/362/Add.7
11 April 2001

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1999

Addendum

Austria*

[24 July 1999]

* This document contains the fourteenth periodic report of Austria due on 8 June 1999. For the thirteenth periodic report of Austria and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/319/Add.5 and CERD/C/SR.1305-1306.

The information submitted by Austria in accordance with the consolidated guidelines for the initial part of the report of States parties is contained in document HRI/CORE/1/Add.8.

GE.01-41244 (E) 300501

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Introduction

1. The Committee established in accordance with Part II of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the Convention) considered the eleventh, twelfth and thirteenth periodic reports submitted by the Republic of Austria in one document on 1 and 2 March 1999 with a delegation of Austrian government representatives. In its concluding observations, the Committee recommended that the State party submit the present report as an updating report and that it address all the points raised during the consideration of the eleventh, twelfth and thirteenth reports.

I. UPDATE OF THE ELEVENTH, TWELFTH AND THIRTEENTH REPORTS

A. General remarks

2. In supplementing its eleventh, twelfth and thirteenth reports, the Republic of Austria would first like to refer to the efforts made at the international level for the purpose of eliminating racial discrimination as well as to the range of legal and other measures taken to achieve this aim (see the compilation of legal texts in annex I*).

3. First, it must be noted that the Republic of Austria considers it a priority to develop measures for combating racism and xenophobia within the framework of international organizations. In autumn 1998, viz. during Austria's Presidency of the European Union, Austria played an active part in the General Assembly negotiations on the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in 2001. This process was successfully continued by the United Nations Commission on Human Rights in March/April 1999.

4. During the preparations for the World Conference, Austria strongly supported the idea of a regional European anti-racism conference to be held within the framework of the Council of Europe. The conference, entitled "All different, all equal: From principle to practice. European contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance", will be held in October 2000. The first preparatory meetings of an ad hoc expert group and an international technical working group, chaired by Austria, were held in February, September and December 1999 and in 2000. Austria also calls for intensive participation by the Vienna-based European Monitoring Centre on Racism and Xenophobia in the ongoing preparations.

5. In order to strengthen the protection of human rights in Europe, Austria supported the creation of the position of Commissioner for Human Rights of the Council of Europe as adopted by the Council's Committee of Ministers on 2 May 1999.

6. As far as the European Union is concerned, Austria expressly welcomes the elaboration of a Charter of Fundamental Rights of the European Union as suggested by the European Council in Cologne and actively participates in the preparatory work of the Convention

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* Available for consultation in the files of the secretariat.

established for that purpose. The codification of the fundamental rights and freedoms that are within the scope of the Treaties establishing the European Union will reflect the basic values of the Union, with special emphasis being placed on tolerance and human dignity.

7. As far as the protection against discrimination is concerned, further important developments are currently being initiated by the European Union and are actively supported by Austria. The European Commission has, for example, forwarded to the Council a package of measures, including two directives for implementing article 13 of the Treaty establishing the European Community. This package is currently being negotiated, and there are signs that the "Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" will be adopted soon.

B. Special section

1. As to article 2

8. As regards the requirement that States parties pursue a policy of eliminating racial discrimination, reference is made to the legal framework set out in Austria's previous reports, and in particular - as this is of central relevance to the topic at issue - to the Federal Constitutional Law Implementing the International Convention on the Elimination of All Forms of Racial Discrimination (Federal Law Gazette No. 390/1973).

9. Article I reads as follows: "(1) Any form of racial discrimination shall be prohibited also insofar as it is not already prohibited by article 7 of the Federal Constitutional Law and article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958. The legislature and the executive shall refrain from any distinction on the sole ground of race, colour, national or ethnic origin."

10. In implementing the provisions of the Federal Constitutional Law, an administrative offence was included, inter alia, in the Introductory Provisions to the Laws on Administrative Procedure (EGVG), Federal Law Gazette No. 50/1991 as amended by Federal Law Gazette vol. I, No. 127/1998.

11. Article IX EGVG reads as follows: "(1) Any person who ... (3) discriminates in an unjustified manner against persons on the sole ground of their race, colour, national or ethnic origin, religious belief or on the ground of a disability or prevents them from entering places or relying on services intended for general public use ... commits ... an administrative offence and shall ... be liable to a fine of up to ATS 15,000, ...".

12. In connection with this provision, a regulation was incorporated into the Industrial Code (Gewerbeordnung) in 1997 (Federal Law Gazette No. 194/1994 as amended by Federal Law Gazette, vol. I, No. 59/1998), entitling the administrative district authority to withdraw trading licences from persons engaged in a business or trade if they discriminate against others on the sole ground of their race, colour, national or ethnic origin, religious belief or a disability.

13. As far as judicial criminal law is concerned, section 283 of the Penal Code (Strafgesetzbuch) is recalled which, for the purpose of implementing article 4 (a) of the Convention, punishes incitement to hostile action. In addition, it should be noted that the Criminal Law (Amendment) Act of 1996 clearly points out that offences committed on grounds of racism and xenophobia are considered highly reprehensible and therefore carry a severer sentence (sect. 33, para. 5 of the Penal Code). The fact that severer penalties are imposed reflects the strong disapproval of such motives.

2. As to article 2 (1) (a)

14. First, it must be pointed out that individual acts by administrative organs are not only determined by civil and criminal law but also by the disciplinary law for civil servants. Section 91 of the Civil Service Act (Beamten-Dienstrechtsgesetz) stipulates, for example, that a civil servant who is guilty of having violated his official duties shall be held responsible for such a violation. According to the Administrative Court's case-law (Nos. 82/09/0094 and 0095), a civil servant of the aliens police department who - even if not on duty - insults or harasses non-Austrian nationals or persons belonging to another race, violates his or her official duties. He or she may even be dismissed as a result of such a violation (sect. 92 of the Civil Service Act).

15. Section 31 of the Maintenance of Law and Order Act (Sicherheitspolizeigesetz) Federal Law Gazette No. 566/1991 as amended by Federal Law Gazette, vol. I, No. 132/1999) stipulates that in interfering with the rights of persons, the public security organs shall see to it that their conduct clearly reflects their impartiality, thus giving the persons affected by the interference the feeling that they are not discriminated against because of their race, colour, national or ethnic origin, religious belief or political opinion. The directive adopted in implementing the above provision requires the security organs to abstain from any action that might be regarded as such a discrimination. Where a civil servant violates the directive, he or she will have to expect disciplinary sanctions.

3. As to article 2 (1) (c)

16. The Republic of Austria wishes to point out that - notwithstanding the competence of the courts and administrative authorities - an independent body, the so-called Human Rights Advisory Council (Menschenrechtsbeirat), was established on 5 July 1999 to review and monitor the activities of the security organs with a view to their observance of human rights (see below on item 10 of the concluding observations).

4. As to article 2 (1) (e)

17. In 1999, Coordinators for human rights issues were established at the Austrian federal ministries and the regional governments of the nine Austrian Länder. The fact that the position of a special officer in charge of integration issues was established at the Municipal Directorate (Magistratsdirektion) of the City of Vienna on 1 December 1997 also deserves to be mentioned in this respect. The officer's principal task is to participate in the preparation and coordination of integration programmes for foreign citizens.

18. Moreover, within the European Union, the Republic of Austria has played an active role in establishing the Vienna-based European Monitoring Center for Racism and Xenophobia. It supports the activities of the Center on a permanent basis also by providing financial assistance. On 30 October 1998, the Federal Chancellery organized the first Austrian Round Table against Racism and Xenophobia in cooperation with the Monitoring Center, where representatives of the federal ministries, political parties, interest groups and NGOs discussed various ways of combating racism and xenophobia.

19. In addition, a national coordination unit was established to support the Monitoring Center and the Austrian members of its administrative council. Other tasks include the organization of further round tables and the coordination of anti-racist activities in Austria. It is a part-time job financed from federal funds. A follow-up to the first round table was held as early as 3 December 1999 focusing on the topics "legal protection against discrimination" and "language and racism". Moreover, the establishment of a permanent working group on educational issues was considered.

20. On the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights in 1998, ATS 5 million were provided as special subsidies by the Federal Government for relevant projects and organizations that are active in this field. The projects were proposed by a board of NGOs and selected by an inter-ministerial working group.

21. Another already existing institution worth noticing is the Immigration Fund, which provides counselling and assistance to persons wishing to emigrate to Vienna. Its major task is to provide advice to foreigners in their respective mother tongue and to help them with their social integration. The Vienna Integration Fund pursues similar aims: to coordinate the activities of all groups and associations engaged in facilitating multicultural coexistence. It also develops concepts and measures for non-discrimination against foreigners and their full integration into the democratic process, both as far as their rights and duties are concerned. It is therefore one of its major tasks to pinpoint still existing legal and structural impediments to integration, to develop concepts for overcoming them and to establish criteria for effective integration measures.

22. Finally, the Integration of Refugees Fund at the Federal Ministry of the Interior has its own legal personality and is financed by the Republic of Austria and the Office of the United Nations High Commissioner for Refugees (UNHCR). The Fund offers individual assistance to refugees and - in exceptional cases - to displaced persons from Bosnia (for example, in the form of housing support, rent subsidies, payment of transitional lodging and German language courses), thus assisting them in their social integration in Austria.

5. As to article 4

23. As regards the requirement to adopt measures designed to eradicate any incitement to, or acts of, racial discrimination, reference is made to the relevant legal provisions, viz. those governing incitement to hostile action (sect. 283 of the Penal Code) and activities inspired by National Socialist ideas (Prohibition Act), as well as to the severer sentences to be imposed for offences committed on grounds of racism and xenophobia (sect. 33, para. 5 of the Penal Code).

to the administrative offence of discrimination on the ground of race (article IX of the Introductory Provisions to the Code of Administrative Procedure), and to the possibility of dissolving unlawful associations and assemblies (Association and Assembly Acts).

24. The Austrian media law also contains regulations that serve the purpose of safeguarding human rights and offer protection against discrimination. According to section 2 (a) of the Broadcasting Act (Rundfunkgesetz) (Federal Law Gazette No. 531/1984, as amended by Federal Law Gazette, vol. I, No. 1/1999), all broadcasts by the Austrian Broadcasting Corporation must in terms of their design and content express respect for human dignity and the fundamental rights of other persons. They must not stir up hatred on grounds of race, sex, religion or nationality. Under section 5 (c) loc. cit., television advertising must not violate human dignity, contain any discrimination with regard to race, sex or nationality, or promote unlawful practices. Section 4 of the Regional Radio Act (Regionalradiogesetz) (Federal Law Gazette No. 506/1993, as amended by Federal Law Gazette, vol. I, No. 2/1999) stipulates that all broadcasts must, in terms of their design and content, express respect for human dignity and the fundamental rights of other persons and must not stir up hatred against the above-mentioned groups.

6. As to article 7

25. In addition to the general prohibition against discrimination, the law on schools and universities contains the following provisions.

26. Article 14 of the Federal Constitutional Act (Bundes-Verfassungsgesetz) reads as follows: "(6) ... Admission to public school is open to all without distinction of birth, sex, race, status, class, language and religion, and in other respects within the limits of the statutory requirements. ..."

27. The Act governing University-level Study Programmes at Special Institutions (Fachhochschul-Studiengesetz) (Federal Law Gazette No. 340/1993, as amended by Federal Law Gazette, vol. I, No. 72/1998) stipulates that admission to such programmes is open to all qualified students without distinction as to birth, sex, race, status, class or religion.

28. As far as instruction, education, culture and information are concerned, the Republic of Austria is also taking measures to combat prejudice. The discussion of phenomena such as racism, xenophobia, discrimination and developments that constitute a threat to democracy or violate human rights therefore play an important role in class instruction - both in view of addressing current problems and preventing their occurrence in future. In addition to the measures taken within the framework of special educational projects, e.g. in connection with commemoration days, the above phenomena are basically discussed in all compulsory subjects. The pupils are informed via the print media and new technologies, whereby special emphasis is placed on in-depth information and on specific contents that are suitable to counteract the above developments. The Federal Ministry of Education and Cultural Affairs provides schools - also via further teacher training courses - with factual information and material that is intended to encourage a democratic education, respect in one's dealings with others and the taking of measures for combating prejudice.

29. In order to prepare young people for their future lives in a pluralistic democracy, special emphasis must be placed on a comprehensive human rights education. Informing pupils about fundamental rights and human rights and of their importance to democracy constitutes an essential element of their political education. Teachers of all grades and subjects have been called upon to provide such information, and all schools and educational institutions have been requested to contribute to the development of suitable training methods. On the occasion of the United Nations Decade for Human Rights Education, the Federal Ministry of Education and Cultural Affairs has established a special service unit at the Ludwig-Boltzmann Institut für Menschenrechte (Ludwig-Boltzmann Institute of Human Rights) for their concrete implementation.

30. Especially at anniversaries and commemoration days, such as the International Day for the Elimination of Racial Discrimination and the Day against Violence and Racism commemorating the Victims of National Socialism, all teachers are called upon to take specific measures that are aimed at discussing anti-democratic tendencies, racism, hostilities towards minorities, xenophobia, right-wing extremism, etc.

31. Combating anti-Semitism is a priority issue for Austria. On 11 November 1997, the National Council (the lower house of the Austrian Parliament) unanimously agreed to declare 5 May a commemoration day against violence and racism in commemoration of Nazi victims. The day, which marks the liberation of the Mauthausen Concentration Camp, was first celebrated in 1998. The establishment of an independent historical commission entrusted with the task of dealing on a scientific basis with dispossessions during the Nazi era and restitution and compensation payments, shows that the Republic of Austria is taking serious efforts to fulfil its commitment to come to terms with the past. In accordance with the first interim report submitted by the Historical Commission, persons who had been forced to work for the Nazi regime are to be compensated without delay. The Government has thus commissioned the former President of the Austrian National Bank, Maria Schaumayer, to handle these matters.

32. The National Fund of the Republic of Austria for Victims of National Socialism, which started work in September 1995 and has so far compensated over 25,000 victims, also established an information office in January 1999 to inform the general public of the current developments in restitution matters and the work of the Historical Commission. Approximately 2,000 persons have turned to the National Fund for assistance in tracing property such as works of art, bank accounts, insurance and flats. The National Fund is trying to support applicants as well as possible by referring them - in full compliance with data protection regulations - to the competent authorities, by passing on requests and by conducting investigations, thus serving as a bridge to their old home country and as a contact point for all Nazi victims.

33. The Federal Ministry of the Interior, which is in charge of the Mauthausen memorial site, has launched a comprehensive information drive. Convinced that the only effective form of prevention is to confront the general public with the realities of the past, it provides access to the still existing parts of the building and - since 1970 - to the permanent exhibition on the Mauthausen Concentration Camp and smaller camps. In addition, exhibitions by artists, pupils and various groups of victims are shown each year at the memorial site to approximately 200,000 visitors, including approximately 60,000 pupils and students.

Since 1998, a special exhibition entitled "1938 - NS-Herrschaft in Österreich" (1938 - Nazi regime in Austria) has been on display in the former kitchen shack. Its aim is to show the complexity of National Socialism in various fields of public and private life.

34. Also in 1998, i.e. on 8 August, an oratorio was performed by Joe Zawinul in the Wiener Graben quarry. On 7 May 2000, the Vienna Philharmonic Orchestra under Sir Simon Rattle gave an evening concert playing Beethoven's Ninth Symphony.

35. Since 1992, 189 young men eligible for military service have performed a substitute service at Holocaust memorial sites abroad. Since 1984, they can do so also at the Mauthausen Public Memorial Site and Museum.

36. In 1999, the Federal Ministry of the Interior issued an ordinance (Federal Law Gazette, vol. II, No. 405/1999) establishing an advisory council for dealing with basic questions of running the Mauthausen Memorial Site and bringing it closer to the attention of the general public. The Advisory Council, which also includes former inmates and members appointed by NGOs, is to coordinate the intentions and aims of these inmates, competent public bodies and NGOs. It provides advice to the Interior Minister on fundamental questions of running the Mauthausen Memorial Site and its external effect. The Council may also be addressed by the Interior Minister on other fundamental aspects of preventing a revival of National Socialist activities.

37. The Republic of Austria supports international conferences on combating xenophobia and anti-Semitism. In December 1998, for example, a symposium "On the Sources of Hatred" was held with outstanding international experts under the patronage of Simon Wiesenthal in Vienna.

38. The Austrian Broadcasting Corporation (ORF) has dedicated a special radio programme entitled Heimat, fremde Heimat (Home, Strange Home) to the situation of foreigners and minorities in Austria. It is a weekly magazine prepared by the Minority Editorial Office of the ORF.

II. THE COMMITTEE'S CONCLUDING OBSERVATIONS

A. As to section C - Principal subjects of concern

1. As to item 5

39. The Austrian Constitutional Court has repeatedly held in its rulings relating to the Federal Constitutional Law Implementing the International Convention on the Elimination of All Forms of Racial Discrimination that a difference in treatment among aliens is admissible only insofar as it is clearly based on a reasonable ground and the difference in treatment is not disproportionate. The Republic of Austria cannot share the Committee's concern about this element, which is examined in the course of reviewing whether there has been an equal treatment.

40. This rule does not introduce an additional, subjective possibility of justifying racial discrimination against foreigners, but merely enables the application of a principle which has become an integral part of the case-law concerning the equality rule enshrined in the Austrian Constitution, viz. that differences in treatment are only justified from a factual point of view if they are based on objective criteria. Accordingly, the same legal consequences must be applied to the same facts, and decisive factual differences must lead to equally different regulations. From this it follows that discrimination on the sole ground of nationality, race, colour or national or ethnic origin is, at any rate, inadmissible. It must be stressed once more that the prohibition against non-factual differentiations is not to be interpreted as providing a subjective opportunity, but rather means that only objective criteria are to be applied. Moreover, there is the possibility of addressing the Constitutional Court, which is in charge of reviewing alleged violations of the Federal Constitutional Law Implementing the International Convention on the Elimination of All Forms of Racial Discrimination.

2. As to item 6

41. The Austrian Aliens Act (Fremdengesetz) (Federal Law Gazette, vol. I, No. 75/1997, as amended by Federal Law Gazette, vol. I, No. 158/1998) basically regulates the entry into, the stay and the settlement of aliens in Austria. Under section 1, paragraph 1, an "alien" is a person who does not have Austrian nationality. According to article 1, paragraph 2, of the Convention, the Convention does not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens. From this it follows, in the Republic of Austria's view, that the distinction in the Aliens Act as set out above is admissible also in the light of the Convention.

42. Section 1, paragraphs 9 and 10, of the Aliens' Act define the terms "EEA national" and "third-country nationals". The differentiation between various categories of foreigners according to their nationality is based on the fundamental freedoms of EEA nationals enshrined in the Agreement on the European Economic Area. The Republic of Austria therefore cannot share the Committee's concern that this policy may be "stigmatizing and discriminatory". The above distinctions are admissible under the Convention or are the result of obligations entered into through bilateral agreements. Similar regulations can thus also be found in the legal systems of all other EEA member States.

3. As to item 7

43. A major problem faced by most autochthonous minorities (such as the Croat, Slovene, Hungarian, Czech and Slovak minorities) in Austria today is the strong pressure which, they feel, is exerted on them to assimilate. This is especially due to the fact that they have relatively few members, live in open settlement areas, and have to cope with new situations (fewer farmers, more communication with persons speaking the language of the majority and not the respective minority language, mobility, mixed marriages, etc.). Economic and social problems (e.g. commuting, rural exodus) may result from the peripheral location of these settlement areas (parts of South Carinthia and South Styria for the Slovene minority, and Burgenland as the traditional settlement area of the Burgenland-Croats and Hungarian minority). It should be noted, however, that these problems basically also affect the local majority population. By providing State

subsidies it is intended to support in particular the activities of minority organizations that aim at increasing and preserving the minorities' command of their respective language, e.g. by enabling them to issue their own publications and to organize a wide range of cultural activities.

44. Somewhat different is the situation of the Roma minority. Many Roma want to improve their educational level as well as their economic and social situation. Several Roma associations (in Oberwart/Burgenland, Vienna and Linz/Upper Austria) have therefore started to assist pupils with learning difficulties by relying on subsidies from the Federal Chancellery's Minority Assistance Fund. As a result of these efforts, in the group's largest settlement area in Burgenland there are no longer any Roma children attending special school.

45. The buildings in this settlement area have also been renovated with considerable amounts of public funds. The Employment Service in that administrative district provides assistance and advice through a member of the Roma minority. The Government also supports cultural activities of Roma organizations. A notable project, launched several years ago, is the codification of the language and compilation of suitable teaching materials. As a result of this project, a bilingual Roma association magazine was published for the first time, and instruction material is now available both in written and electronic form (learning games for children). In autumn 1999, Romany was taught for the first time at a public school, and an adult education centre for Burgenland Roma has been established.

46. The members of the Czech and Slovak minorities live in Vienna. The Czech minority has a network of associations, including several gymnastics clubs and the Komensky school association, which also have their own print media. The Vienna Komensky School Association operates Austria's only bilingual Czech private school as well as a bilingual kindergarten. It offers not only elementary education but also bilingual instruction at the lower secondary level, which is to be extended as from the 2000/2001 school year to the upper level leading to the final school-leaving examination (Matura).

47. The Slovaks are the smallest minority in Austria currently organized in a minority association. Their needs are catered for by the so-called Slovak spiritual welfare work. The association organizes cultural and social events and publishes its own circular. Apart from the Komensky School, Slovak is also taught in a public school in Vienna's seventh municipal district.

48. Another positive aspect is the use of the various minority languages by the Catholic and Protestant Churches in their spiritual, cultural and social work. In doing so, they are making a major contribution to the existence and preservation of Austrian minority groups. The Republic of Austria promotes the cultural activities of all minorities in order to guarantee their maintenance and further existence and the preservation of their culture, identity and individual rights (cf. sect. 8 of the Minorities Act). Here it becomes evident that each minority has its special interests and concerns.

49. It must also be mentioned that a local minority radio started to broadcast in Carinthia in October 1998 and another in Burgenland in April 1999, providing programmes in Burgenland-Croatian, Slovenian, Hungarian and Romany.

50. Of particular relevance is the bilingual education system regulated by the Minority Schools Acts for Burgenland and Carinthia. Under this system, great emphasis is placed on an effective basic and further training of bilingual teachers and the preparation of modern methodological tuition material in minority languages. In addition to bilingual elementary and compulsory secondary schools, a Slovene grammar school (Gymnasium) and a bilingual commercial college (Handelsakademie) were established in Klagenfurt as well as a bilingual grammar school (Croatian-German, Hungarian-German) in Oberwart (Burgenland). This gave rise to a significant educational momentum within these minorities. In the 1999/2000 school year, a unique pedagogical undertaking known as "Kugy class" was introduced at the Slovene Gymnasium. This is a project under the school autonomy scheme in which new approaches to multilingual teaching are taken and which is open for participation by students from Carinthia, Slovenia and Friuli. The carrier languages of the project are Slovenian - the common language of all the children - as well as German, Italian and English. Instruction in minority languages is also provided by schools not covered by the Minority School Acts for Burgenland and Carinthia, ranging from bilingual tuition and voluntary exercises to optional subjects.

51. Special reference must also be made to the Burgenland Kindergarten Act, which specifically addresses the needs of the members of the Burgenland-Croat and Hungarian minorities for a bilingual education in early childhood in the public kindergartens of Burgenland. Although the legal situation is different in Carinthia and in Burgenland, some public kindergartens in Carinthia also offer bilingual and multilingual groups and private bilingual kindergartens obtain a special subsidy from the Federal Chancellery.

52. As regards the legal protection of resident foreigners against discrimination by Austrian citizens, reference is made to our previous reports and to the legal situation outlined above under article 2.

4. As to item 8

53. As regards the concrete set-up of section 283, paragraph 1, of the Penal Code, it must first be pointed out that - apart from the conflicting interests that may occur in connection with the fundamental right of freedom of expression - this provision is intended to secure public peace. The criminal provisions serving the protection of the rights of individuals certainly do not contain such a restriction. Anyone who insults individuals (sect. 115 of the Penal Code) or incites others to commit criminal acts against individuals on racist grounds is liable to punishment without there being any need for a reference to public peace. The offence of insulting others, which basically is an offence to be prosecuted by private parties (meaning that the insulted person bears the risk of paying the costs of the proceedings), is prosecuted by the Public Prosecutor ex-officio, if committed on racial grounds. In such a case, the victim merely has to give his or her consent to the criminal prosecution under section 117, paragraph 3, of the Penal Code and - irrespective of the outcome - does not have to bear the costs of the proceedings. As outlined above, the offender faces a severer punishment if he or she has committed the offence on grounds of racism or xenophobia.

54. The criminal provision of section 282 of the Penal Code ("Incitement to criminal acts and approval of criminal acts"), which has also been introduced for the protection of public peace, requires the offence to be committed in public. There is, however, no need for the offence to be liable to endanger public order, as is required by section 283, paragraph 1, of the Penal Code.

55. It must be pointed out that section 283, paragraph 2, of the Penal Code does not require the existence of such a danger for an incitement to a hostile act either. The offender stirs up hatred and contempt by appealing to the feelings and passions of others. The offence enshrined in section 283, paragraph 1, of the Penal Code is thus confined to acts which, on the one hand, do not constitute a concrete form of insult or concrete activities and, on the other hand, do not reach the level of stirring up hatred or inciting others to commit criminal acts against the above-mentioned groups. It is a so-called abstract dangerous offence, meaning that the mere fact that it is liable to create a danger for public peace, is sufficient.

56. As regards the measures taken by the criminal courts for prosecuting offences under section 283 of the Penal Code, reference is made to our observations under item 14.

57. As far as the implementation of article 4 (b) of the Convention in Austria is concerned, the provisions regulating the right to form an association and the right to assembly are to be considered. The prohibition of organizations taking the form of an association which promote or stir up racial discrimination is enshrined both in the Association Act and in the pertinent criminal laws. Under section 6 of the Association Act the State Governor "shall prohibit the creation of an association ... , if the association would be unlawful because of its purpose, name or organization. ..." An association can thus be prevented from being established if its activities are to include punishable acts as enshrined, for example, in section 283 of the Penal Code (incitement to hostile action) or sections 3 (a) et seq. of the Prohibition Act (re-establishment of National Socialist organizations or ideas). This can be done without the association having taken a single measure with an external effect. An already established association may be dissolved under section 24 in conjunction with section 20 of the Association Act, if "it has taken decisions or issued orders that are contrary to criminal provisions".

58. The Prohibition Act (Verbotsgesetz) of 1947 (Constitutional Law on the Prohibition of the National Socialist German Labour Party) also combats racist propaganda and organizations. The implementation of the provisions of the Prohibition Act by the courts of law are discussed under item 14.

59. Organized propaganda activities which do not amount to activities by an association may be classified as assemblies. Under section 6 of the Assembly Act of 1953, assemblies may be prohibited in advance where they are contrary to existing criminal laws (for example, sect. 283 of the Penal Code or sect. 3 (a) of the Prohibition Act). An assembly in progress may also be prohibited or dissolved on the grounds mentioned above.

5. As to item 9

60. As far as racial discrimination in the private sector is concerned, the Republic of Austria refers to the above-mentioned provision of article IX, paragraph 1, subparagraph 3, of the Introductory Provisions to the Laws on Administrative Procedure. By stipulating that a person

who discriminates against others on racist grounds commits an administrative offence, article IX fully implements article 5 (f) of the Convention. This provision is also relevant in the field of civil law.

61. A contract that is contrary to the above prohibition shall be deemed null and void by act of law according to section 879, paragraph 1, of the Civil Code (Allgemeines Bürgerliches Gesetzbuch). As a general rule, the "bonos mores clause" enshrined in section 879, paragraph 1, of the Civil Code prohibits all forms of racial discrimination.

62. Moreover, the assumption of a so-called Kontrahierungszwang, viz. a legal obligation imposed on certain persons o undertakings to conclude certain contracts, may be a remedy against certain forms of racial discrimination. The Supreme Court (Oberster Gerichtshof) has ruled, for example, that a discriminatory rejection or expulsion of the person concerned by the owner of a pub/restaurant may constitute a violation of bonos mores. It noted that even in the absence of such an obligation to contract, the fundamental right to protection of the personality (article 8 of the European Convention on Human Rights) requires anyone to avoid a defamatory exclusion from certain services without sufficient and reasonable justification. And last but not least, section 16 of the Civil Code, which lays down fundamental private-law principles of personal protection and human dignity, may also provide protection against racial discrimination.

63. Section 1330 of the Civil Code provides that any person who, due to defamation, has suffered damage or loss of profit is entitled to claim compensation. The same applies if someone disseminates statements of fact which jeopardize another person's credit, gain or livelihood.

64. As far as Austrian labour law is concerned, reference must be made to section 105, paragraph 3, of the Industrial Relations Act (Arbeitsverfassungsgesetz) which provides for the opportunity to challenge unjustified dismissals on certain grounds, such as racial grounds.

65. Moreover, we would like to recall the regulation discussed under article 2, which was included in 1997 in the Industrial Code (Gewerbeordnung). It provides for the withdrawal of trading licences from persons engaged in a business or trade if they discriminate against others on racial grounds.

Eligibility for participation in work councils

66. As far as the right of foreigners to be elected to work councils is concerned, the competent Federal Ministry of Labour, Health and Social Affairs has drawn up a proposal for amending the Industrial Relations Act. The political discussion of the draft could not be completed prior to the general elections and will be continued in the new legislative period.

6. As to item 10

67. As regards the concerns about reports of serious incidents of police brutality in dealing with persons of foreign origin and ethnic minorities, the Republic of Austria would like to point out that in a government bill presented to the National Council in October 1998 for the purpose of amending the Maintenance of Law and Order Act (Sicherheitspolizeigesetz); (1479 of the

supplements, stenographic protocol XX. GP.), the Federal Minister of the Interior proposed the establishment of an independent body for the purpose of reviewing and observing police activities and their compliance with human rights principles.

68. The need for rapid improvements in this field has repeatedly - and not only in response to the death of an alien during his deportation - been voiced in public. In view of the necessary in-depth consideration of human rights issues by police organs and the review of their activities and compliance with human rights principles, the Federal Minister of the Interior did not wait for the entry into force of the Maintenance of Law and Order (Amendment) Act, but as early as in the first half of 1999 established the so-called Human Rights Advisory Council by issuing the human rights ordinance (Federal Law Gazette, vol. II, No. 202/1999). Following the entry into force of the ordinance, the members and substitute members of the Human Rights Advisory Council were appointed for the first three-year period on 5 July 1999.

69. The recommendations and reasoning submitted by the Advisory Council to the Federal Minister of the Interior are published in the Security Report which is to be presented by the Federal Government under section 93 of the Maintenance of Law and Order Act to the Nationalrat and the Bundesrat (the two chambers of the Austrian Parliament) each year.

70. The Maintenance of Law and Order (Amendment) Act entered into force on 1 September (Federal Law Gazette, vol. I, No. 146/1999). The tasks of the Human Rights Advisory Council are enshrined in section 15 (a), which is a constitutional provision.

71. It is in two ways that the concept of the Human Rights Advisory Council and the intentions of the Minister of the Interior go beyond the proposal of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

72. On the one hand, the activities of the Advisory Council will not be confined to examining the situation of detainees with a view to their adequate treatment (article 3 of the European Convention on Human Rights). In doing so, a delegation or commission of the Council is entitled to visit any office of the security police and any place where it exercises power and compulsion as an administrative authority. According to the priorities defined by the Advisory Council, its tasks also comprise an examination of all human rights aspects in the context of the entire range of police activities.

73. On the other hand, its tasks are not confined to exercising controls and pinpointing abuses and deficiencies. They also include the preparation of concepts and the submission of proposals for improvements to the Interior Minister, which may both comprise aspects of carrying out specific tasks and creating suitable organizational framework conditions for police activities and their compliance with human rights.

74. This ambitious aim justifies the involvement of other ministries dealing with human rights issues and private institutions that are active in this field. In addition to being an independent control organ, the Human Rights Advisory Council thus also takes an interdisciplinary approach, fostering the dialogue between the security police and representatives of the civil society on the various demands faced by police officers in complying with human rights principles.

75. In this respect also the so-called Anti-torture decree, as issued by the Federal Minister of Justice on 30 September 1999, is to be mentioned. It calls on the Presidents of the Regional Courts of Appeal and the Senior Public Prosecutors' Offices to adapt their investigative practices in examining allegations of police violence to the requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Federal Law Gazette No. 492/1987). The Public Prosecutor's Offices were requested to determine, without delay, allegations of ill-treatment on the part of police officers by way of judicial examinations (or by filing a request with the competent court for initiating preliminary investigations).

76. As a parallel measure, the Federal Ministry of the Interior is currently preparing a decree ordering the security police authorities to report immediately any allegations of ill-treatment concerning their own personnel to the competent Public Prosecutor's Office and to refrain from investigating the case themselves unless immediate action is required for the preservation of evidence. This procedure is to guarantee a prompt and unbiased examination of complaints by the competent authorities.

B. As to section D - Suggestions and recommendations

1. As to item 11

77. As regards the Committee's proposal to introduce comprehensive legislation to prohibit racial discrimination, reference is made to our previous reports and to the legal provisions elaborated in the present report. They prohibit any form of racial discrimination without distinguishing between nationals and foreigners.

78. To the Committee's recommendation to delete one word in the Federal Constitutional Law Implementing the International Convention on the Elimination of All Forms of Racial Discrimination, the Republic of Austria may point out that an amendment of this provision is currently being considered.

2. As to item 12

79. As regards the wish for more detailed demographic data, reference is made to the statistics enclosed in annex II.* However, it must be pointed out that categories such as race or ethnic origin are usually not included in unemployment statistics since the collection of such data appears problematic in the light of the required protection of personal data and fundamental rights. The members of national minorities also strictly oppose a determination of their numerical strength. This principle is enshrined in section 1, paragraph 3, of the Minorities Act (Volksgruppengesetz).

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* Available for consultation in the files of the secretariat.

80. In order to gain an overview of the ethnic composition of the Austrian people, the national census results, in particular the latest figures of 1991, may serve as a basis. At the 1991 census, covering a total of 7,278,096 Austrian nationals all over Austria (and not only in the autochthonous settlement areas of the six ethnic groups), a certain number (see the exact figures below) stated that they spoke the following language in everyday life:

29 596	Croatian	0.40%
19 286	Slovene	0.26%
19 638	Hungarian	0.27%
9 822	Czech	0.13%
1 015	Slovak	0.1%
122	Romany	0.002%

(Where more than one language including "German" was given, this was classified under the respective minority language.)

81. The least precise statements can be made about the number of Roma living in Austria. It can be assumed, however, that as far as the "language used in everyday life" is concerned, the figures of the census results are far too low compared with the number of autochthonous Roma.

82. A positive aspect is the increasing number of pupils attending bilingual schools in Burgenland and Carinthia even if these figures must by no means be used to classify each individual pupil under a specific ethnic group.

83. In 1998/99, 12,040 pupils attended primary schools in Burgenland, with 1,436 children attending bilingual schools. In the latter schools, 476 pupils said they spoke Croatian and 26 Hungarian in everyday life.

84. In the academic year 1998/99, 6,211 pupils were registered at primary schools in the area covered by the Minority Schools Act for Carinthia (including two primary schools in Klagenfurt), of whom 1,723 attended bilingual courses. The rising number of pupils registering for bilingual instruction, which is available also to non-minority members, is of particular relevance to a peaceful coexistence of the majority and minority populations in a spirit of mutual understanding.

3. As to item 13

85. As regards the Committee's recommendation to review Austria's current immigration policy in respect of foreigners of different nationality, reference is made to our previous observations under item 6.

As to the practice of granting asylum

86. As early as at the beginning of the present legislative period, the Federal Ministry of the Interior intends to carry out an evaluation of the Asylum Act, which entered into force on 1 January 1998. The results of its evaluation could be included in the next report.

87. As regards the current practice of granting asylum, reference is made to the government ordinance regulating the right of Kosovo Albanians to stay in Austria as displaced persons, and to the amendment to the settlement ordinance defining the maximum (quota-based) number of foreigners entitled to stay in Austria in 1999 (Federal Law Gazette, vol. II, No. 133/1999, as amended by Federal Law Gazette, vol. II, No. 461/1999). It gives nationals of the Federal Republic of Yugoslavia and their minor children and spouses who are Kosovo Albanians, an interim right of stay until 31 March 2000 at the latest; this period may be extended under certain circumstances. Reference is also made to a decision of the Austrian Administrative Court, which held in its ruling of 12 May 1999 (No. 98/01/0455) that members of the Albanian ethnic group in Kosovo generally had to fear persecution simply because they belonged to that group and that this was a relevant factor for granting them asylum.

88. With the Asylum (Amendment) Act (Federal Law Gazette, vol. I, No. 4/1999), the Federal Minister of the Interior is now legally entitled, under section 4, paragraphs 3 (a) to 3 (d), to define by decree, and after having obtained a statement by the Federal Minister of Foreign Affairs, those States which do or do not grant asylum-seekers effective protection against persecution on a regular basis. The requirements for issuing a "positive" decree are set out in detail in paragraph 3 (a). However, no such decrees have been issued until today.

89. The statistical data on asylum applications from 1997 until 1999 are as follows:

	1999	1998	1997
January	1 366	724	468
February	1 150	706	487
March	1 373	804	475
April	1 658	703	558
May	1 942	680	396
June	2 663	909	505
July	1 753	1 112	564
August	1 636	1 278	650
September	1 708	2 051	629
October	1 451	1 757	718
November	1 829	1 531	677
December	1 600	1 550	592
Total	**20 129**	**13 805**	**6 719**

4. As to item 14

90. As regards the recommendation to fully implement article 4 (b) of the Convention, reference is made to our previous observations under item 8.

As regards the practice of prosecuting racist activities

91. The last few years have seen the following statistical development regarding criminal proceedings for incitement to hostile action under section 283 of the Penal Code (number of persons; convictions and acquittals were taken into account in the year in which they became final):

	Reported offences	Charges	Convictions	Acquittals
1990	56	4	4	0
1991	35	17	6	3
1992	61	23	14	5
1993	60	5	16	7
1994	44	9	3	7
1995	34	13	10	1
1996	20	1	1	1
1997	43	6	1	0
1998	14	1	5	1
1999	-	2	3	1

92. To our knowledge, there has only been one conviction under section 283 paragraph 1, in conjunction with section 287 of the Penal Code (committing a crime under the influence of severe intoxication). The conviction was based on statements, including "The Nazis are coming, we are the Nazis. Foreigners go away", made during a football game in which a team comprising primarily Turkish nationals participated. The convicted person greeted others with "Heil Hitler" and demonstrated aggressive behaviour that was intended to incite spectators to physically attack foreigners of Turkish nationality. The offender was convicted with final effect to 10 months' imprisonment on probation because of the above incident and other offences.

93. In legal literature (Leukauf-Steininger, StGB[3](Penal Code), section 283 marginal No. 4 f, Steininger, Wiener Kommentar (Vienna Commentary), marginal No. 14 relating to section 283 and Foregger-Kodek, StGB[6]), the following examples are given for section 283, paragraph 1 of the Penal Code: an incitement to boycott certain groups in society or in the business sector, including incitement to prevent members of certain ethnic groups from entering a restaurant or pub or incitement to hostile action against ethnic groups through the presentation of hostile actions by way of gestures, pictures, films or other forms of expression, such as the indicating of the hanging of a member of these groups.

94. As regards criminal proceedings conducted under the Prohibition Act, the following statistical development has been observed in recent years (number of persons; convictions and acquittals were taken into account in the year in which they became final):

	Reported offences	Charges	Convictions	Acquittals
1990	229	1	1	0
1991	276	3	0	0
1992	708	19	5	0
1993	623	20	17	2
1994	715	24	22	1
1995	874	38	22	4
1996	536	38	21	6
1997	427	6	10	8
1998	424	19	12	1
1999	-	43	24	3

Criminal court decisions in detail

Judicial decisions relating to section 3 (a) of the Prohibition Act

95. Section 3 (a) tops the list of individual criminal provisions enshrined in the Prohibition Act. The offence outlined in paragraph 1 (essentially the attempt to re-establish the National Socialist German Labour Party (NSDAP) or other National Socialist organizations) is hardly of any practical relevance. The other offences concern:

(a) Paragraph 2: the establishment of an association that is designed to undermine the sovereignty of the Republic or to disturb order in public places through the activity of its members who are inspired by National Socialist ideas;

(b) Paragraph 3: the support of such an association or a successor to the NSDAP;

(c) Paragraph 4: the production, procurement or making available of weapons or related tools, means of transport or communication to such an organization.

96. According to the files, 23 persons were charged with the above offences in the 1990s. In seven cases, the offenders were convicted under these paragraphs, and in some cases their conduct was qualified as being contrary to sections 3 (b) and 3 (g) of the Prohibition Act. In examining a case where three persons were charged with trying to establish a "Nordic-Germanic Front" contrary to section 3 (a), paragraph 2, of the Prohibition Act, the Innsbruck Regional Court (Landesgericht) decided to dismiss the proceedings under section 9 paragraph 1 (2) of the Juvenile Courts Act (Jugendgerichtsgesetz), requiring the offenders, inter alia, to attend a three-day seminar on Nazi history and Nazi ideology organized by the University of Innsbruck. The Innsbruck Court of Appeal confirmed this decision. The remaining charges brought under section 3 (a) of the Prohibition Act related to the association Volkstreue Außerparlamentarische Opposition (VAPO), which is known from media reports.

97. Three convictions under section 3 (a), paragraph 2, and one conviction under section 3 (a), paragraph 3, have so far served as a basis for rulings of the Supreme Court. As far as the term "association" (Verbindung) is concerned, the Court saw no reason not to rely on previous court decisions based on section 246 of the Penal Code (associations hostile to the State) as long as reference is also made to the purpose of the association as required by section 3 (a), paragraph 2, of the Prohibition Act. Under this provision, an association is defined as a larger group of persons with a more or less strict organization, one or several leaders, and clearly defined rules regarding its aims and the rights and duties of its members. The association must be established for a longer period of time and there is no need for a written definition of its aims and specific organizational criteria.

98. While one person was in addition charged with establishing VAPO in 1986, the following modes of conduct were considered major activities inspired by National Socialist ideas within the meaning of paragraph 2: various activities of the area commander as well as of persons acting as Gaubeauftragte (commissioners) or Kameradschaftsführer (comradeship

leaders), who were engaged, for example, in establishing comradeship and recruiting members, conducting meetings (Gau roll calls, ideological training), making available and preparing propaganda material, etc.

99. Activities in support of such an association under paragraph 3 were considered to include the position of deputy Gau commissioner for Upper Austria and Salzburg as well as, to some extent, the position of Salzburg comradeship leader, which implies canvassing for members, distributing neo-Nazi propaganda material and organizing cadre evenings. A guilty verdict on these grounds was also examined by the Supreme Court. The remaining charges under section 3 (a), paragraph 3, were based on similar facts.

Judicial decisions relating to section 3 (b) of the Prohibition Act

100. Section 3 (b) punishes the participation in and the provision of financial or other forms of assistance to an association. Only in one case was the Supreme Court's ruling based on proceedings where charges had been brought against a total of eight persons for participating in VAPO contrary to section 3 (b) of the Prohibition Act. Two defendants were convicted under section 3 (b) and the verdict was confirmed by the Supreme Court. They were both found guilty of providing financial assistance to VAPO between August and December 1991, each by contributing a monthly sum of ATS 100 to the rental costs of VAPO's "Gau office" in Vienna. One of the two defendants was also convicted of having participated in VAPO activities by:

(a) Joining for several years various groups of regulars and attending "comradeship evenings" of the association,

(b) Leading for about 1½ years so-called VAPO "home meetings", where National Socialist policies concerning the family and the population were advocated;

(c) Participating together with other members and supporters in a commemoration intended to glorify National Socialist militarism;

(d) Participating in the inauguration of the new VAPO comradeship in Gmunden where leading VAPO personalities outlined its aims.

101. The Supreme Court also considered the above conduct to amount to an active participation in VAPO activities. It noted that even prior to its amendment, the term participation was understood by the Prohibition Act as meaning a person's membership as such, which need not be of a formal nature but consists in the participation in events, meetings, etc. and in maintaining contacts with VAPO member. A participant within the meaning of section 3 (b) is thus anyone who makes contributions to, works for or attends meetings of such an association.

102. The other charges under section 3 (b) of the Prohibition Act also related to the participation in and support for VAPO. To our knowledge, charges were brought against 38 persons, 10 of whom were also based on section 3 (a). There were 23 convictions. Apart from

VAPO participation, taking the form of an active participation in various activities of the organization, the keeping of computer files was also considered by the Court to amount to other forms of assistance in accordance with section 3 (b) loc. cit.

Judicial decisions relating to sections 3 (c) and 3 (d) of the Prohibition Act

103. Section 3 (c) of the Prohibition Act, which provides for some sort of "tätige Reue" (a voluntary act by which the perpetrator hinders the fulfilment of the offence), has recently not been of any practical relevance. Neither is the criminal provision enshrined in section 3 (d), which prohibits any invitation, encouragement or incitement of the general public to commit a punishable act within the meaning of section 1 (re-establishing the NSDAP, its military units and any other National Socialist organizations) or section 3 (activities to support the NSDAP or its aims), in particular if this is done for the purpose of glorifying or praising the Nazi party's aims, institutions or measure. There has so far been only one conviction in this respect. It was based on the dissemination of a publication, showing the Third Reich eagle and the swastika symbol, which insistently and explicitly called on the readers to propagate National Socialist ideas.

Judicial decisions relating to sections 3 (e), 3 (f) and 3 (i) of the Prohibition Act

104. While sections 3 (e) and 3 (i), relating to offences comparable to conspiracy, are of no practical relevance, several charges have been brought in recent years under section 3 (f) on grounds of arson and causing severe damage to property as a form of National Socialist activity (including an attempt to set a home for refugees in Traunkirchen (Upper Austria) on fire). Several persons were convicted under section 3 (f) for laying a fire at the Islamic Centre in Vienna in November 1991, for daubing walls with the swastika symbol in Tyrol and for desecrating the Jewish cemetery in Eisenstadt (Burgenland). Moreover, a young person was convicted in Wels (Upper Austria) for an arson attack in which one person was killed and several others were injured.

Judicial decisions relating to section 3 (g) of the Prohibition Act

105. The largest number of charges under the Prohibition Act were based on its central provision, i.e. section 3 (g), which covers all cases of National Socialist activities not regulated by sections 3 (a)-3 (f). A total of 104 charges were brought between 1990 and mid-February 1999; there were 58 final convictions (again, the largest number) and 17 acquittals. In the last few years, the Supreme Court essentially ruled on section 3 (g) of the Prohibition Act as follows.

106. Section 3 (g) is a general clause, comprising all National Socialist activities that are not covered by sections 3 (a)-3 (f). A wide range of activities may thus constitute an offence under this section, in particular where the offender uses typical elements of the National Socialist programme. He/she does not need to approve of all aspects of Nazi ideology. Acts which, taken by themselves, are not typical National Socialist activities are punishable if, from an objective point of view and according to the offender's aims, they are part of an overall conduct which

constitutes an offence under section 3 (g). Moreover, activities where - in an attempt to hide their true feelings - the offenders refrain from showing their allegiance to historical National Socialist ideas may be punishable in the above sense. Using political slogans for propaganda purposes in a manner which clearly reflects objectionable Nazi aims and values constitutes an offence, even if the ideas behind these slogans had previously been used by other political parties and had only been borrowed by the Nazis. Hence, for such an offence to be committed, the offender need not pursue the entire range of aims that are an integral part of National Socialist ideology. A positive presentation of Nazi acts of violence does, however, constitute an offence even if it is an isolated measure and not accompanied by further complex activities.

107. According to the case-law of the Austrian courts, denying mass exterminations, especially the killing of people with poison gas under the Nazi regime, with the intent to revive National Socialist ideas is to be considered under section 3 (g) also after the entry into force of section 3 (h) as a result of the Prohibition (Amendment) Act of 1992. The Supreme Court has already held previously that polemic glorifying Nazi acts of violence for propaganda purposes cannot claim to be based on a scientific approach. It is to be regarded merely as a statement of opinion and is as such subject to the limits imposed by the criminal laws. This is all the more so when it comes to denying or grossly minimizing such events. The Supreme Court held that the Prohibition (Amendment) Act of 1992 has clarified - thus complying with the Court's previous case-law - that the question of the existence of gas chambers intended for the methodical extermination of human beings does not require the taking of further evidence. It rather follows from section 3 (h) that no evidence must be taken in the proceedings regarding the actual existence of the National Socialist genocide and other National Socialist crimes against humanity, meaning that these facts need no longer be proved.

108. In addition to denying the Holocaust under the Nazi regime and using typical Nazi symbols and slogans for propaganda purposes, the following forms of conduct were, inter alia, considered an offence in convictions examined by the Supreme Court:

(a) To stir up hatred against the Jewish people and its members (it must be noted in this respect that statements made contrary to section 283 of the Penal Code are of a subsidiary nature where offences are to be considered under the Prohibition Act);

(b) To encourage xenophobia;

(c) To glorify Germandom in a one-sided manner;

(d) To deny the existence of Austria as an independent State;

(e) To approve of the violent occupation of Austria in 1938 and disparage the "Austrian nation" in a one-sided manner;

(f) To describe National Socialist measures in positive terms, including the activities leading to the outbreak of the Second World War and the aims of Adolf Hitler's Third Reich;

(g) To state that the Nazi regime had forcefully been driven by the Jewish People and the Allied Forces into belligerent action and can thus not be held guilty for what happened during the war;

(h) To refer to Poland as a robber State;

(i) To maintain, by relying on the Old Testament, that in the course of their history Jews have committed numerous crimes of utmost severity not committed by other people.

109. Xenophobic behaviour and a negative attitude towards the immigration of foreigners were considered offences under section 3 (g) by the Supreme Court, if based on a racial evaluation, viz. where the offender relied on arguments that were used by the Nazis to justify violent acts against Jews and other peoples "that were inferior from a racial point of view". Statements against aliens do not as such constitute an offence. The Supreme Court did, however, take the view that xenophobic behaviour by a person who had committed further punishable acts, and in particular supported an organization within the meaning of section 3 (a), constituted one aspect of an overall conduct that was aimed at pursuing National Socialist activities. The subject matter to be considered by the Court was the fixing of stickers reading "Say No to the influx of aliens". Where an offender for the purpose of National Socialist agitation makes statements which, considered by themselves, are to be deemed to stir up hatred, these statements must - due to the subsidiary nature of section 283 of the Penal Code - also be considered in the light of section 3 (g) of the Prohibition Act. More than half of the convictions under section 3 (g) were based on xenophobic, racist or anti-Semitic statements or activities associated with VAPO, an organizations that can generally be regarded as hostile to alien.

Judicial decisions relating to section 3 (h) of the Prohibition Act

110. There have so far only been two final convictions for a violation of the criminal provision of section 3 (h), which was introduced as a result of the Prohibition (Amendment) Act and entered into force on 20 March 1992. The low number of convictions is due to the fact that the offence of strongly denying, playing down, approving or justifying the Holocaust and other Nazi crimes in public, is still to be considered - if committed with a certain intent - under section 3 (g) of the Prohibition Act. Proceedings against the editor of a journal containing theories denying the mass destruction of human beings through poison gas during the Nazi regime were finally terminated with a guilty verdict under section 3 (h).

The activities of the Ombudsman

111. Under article 148a of the Federal Constitutional Act, "everyone" (irrespective of his or her nationality) can lodge a complaint with the Ombudsman's Office against alleged maladministration at the federal level. There is therefore no need for the Ombudsman to establish the nationality or ethnic origin of the person filing the complaint.

112. Eighteen complaints were filed in 1997, 15 in 1998 and 7 in the first six months of 1999 regarding the implementation of the Employment of Foreigners Act (Ausländerbeschäftigungsgesetz). According to the Ombudsman's Office, a friendly settlement was reached in each case.

5. As to item 15

113. As regards the judicial practice of prosecuting racist activities, reference is made to our observations under item 14.

6. As to items 16, 18 and 19

114. The Republic of Austria would like to inform the Committee that an examination of these recommendations is being considered.

7. As to item 17

115. The Republic of Austria is taking various measures to ensure an adequate training of legally competent civil servants and police officers, teaching them how to comply with human rights principles and to combat prejudice leading to racial discrimination.

116. The Federal Ministry of the Interior has held various seminars and prepared a number of projects on human rights issues and tolerance towards other ethnic groups. In 1998 and 1999, a project week entitled "Human Rights Week", with a follow-up, was organized for members of the security police, involving internal and external experts from NGOs such as Amnesty International and Caritas. The aim of the project is to enable the participants to act as multipliers and to pass on the acquired knowledge to the various organizational units of the security police (snowball effect).

117. Since autumn 1999, police officers can attend a two-semester training course at the International Study Centre of the Verband Wiener Volksbildung. This course, which is entitled "Police Activities in a multi-cultural Society", is intended to improve the conduct of police officers of the Vienna Federal Police Directorate who often deal with migrants. If successful, it will be included in the training programme of the Security Police Academy and extended to address a larger group of persons.

118. The subjects Constitutional Law, Applied Psychology and Sociology are generally taught in the training courses attended by the security police. Under the subject Professional Ethics, police officers also consider and discuss their professional image, values and role in society as well as the causes and handling of role conflicts. Advanced training on human rights issues primarily takes the form of a concomitant vocational training with special emphasis being placed on dealing with foreigners, conflict resolution, security, freedom and migration.

119. In June 1999, the Federal Minister of the Interior issued new guidelines for the deportation of foreigners on scheduled airlines and entrusted special police units with the task of carrying out such deportations. A special training programme on the topic "deportation by plane" has also been prepared by the psychological service in cooperation with the Ministry's

competent departments. The programme was set up in response to an incident in May 1999 when Marcus Omofuma died during his deportation. Criminal proceedings for determining the responsibility of the police officers accompanying him are pending.

120. The Federal Ministry of Justice is also taking various measures to sensitize judges and public prosecutors active in this field. Since 1997, which was declared the Year against Racism by the European Union, racism and xenophobia have increasingly been taken into account in the preparation of further training programmes for judges and public prosecutors.

121. In 1997, the twelfth symposium "Justice and Contemporary History", which serves as a forum for discussing social phenomena that are relevant from a judicial point of view and is traditionally organized by the Federal Ministry of Justice in cooperation with the Federal Ministry of Science and Transport, was held on the topic "Justice and Xenophobia". Judges, historians and representatives of other disciplines considered the conduct of judges in dealing with aliens and their attitude towards xenophobia.

122. In preparing for seminars on "Racism and Xenophobia", the Federal Ministry of the Interior, in cooperation with the Austrian Institute for Asylum Coordination and the International Study Centre for Scientific Adult Education and Democratic Research at the Vienna Association for National Education, distributed questionnaires to all the judges and public prosecutors at the Vienna Regional Court of Appeal and the Vienna Public Prosecutor's Office. The questions were designed to draw their attention to the issue of xenophobia with which they are confronted in everyday work. Moreover, they should develop an interest in the planned training courses and seminar. In view of the great interest (40 per cent of the questionnaires were returned), a seminar prepared by the Federal Ministry of the Interior in cooperation with the above bodies was held on the topic "Racism and Xenophobia" for judges and public prosecutors of the Vienna Regional Court of Appeal and the Vienna Public Prosecutor's Office on 22 and 23 June 1998.

123. A lecture organized by the President of the Linz Regional Court of Appeal was held on the topic "The European Convention on Human Rights and Civil Law" on 20 November 1998.

124. On 14 December 1998, the President of the Graz Regional Court of Appeal, having regard to the results of the above questionnaire, conducted a seminar on xenophobia and the development of the law on criminal procedure on the basis of the findings of the European Court of Human Rights.

125. In 1999, a two-day seminar on racism was attended by judges and public prosecutors of the Linz Regional Court of Appeal and the Linz Public Prosecutor's Office. The seminar was also based on a concept developed by the Austrian Institute for Asylum Coordination and the International Study Centre for Scientific Adult Education and Democratic Research at the Vienna Association for National Education, drawing on the experience gained in the above-mentioned "Vienna seminar".

126. In order to sensitize judges and public prosecutors to the need for dealing with minorities in a non-discriminatory manner, specifically designed seminars are being elaborated.

127. A special human rights course was offered for the first time by the Federal Academy of Public Administration (Verwaltungsakademie des Bundes) in its 1999/2000 study programme. It gives interested civil servants of all administrative fields the possibility to systematically examine the various aspects of international human rights protection and to consider ways for its implementation in Austria.

8. As to item 20

128. An efficient and modern form of disseminating the Committee's and States parties' reports is via the Internet. The reports will therefore be published on the Web site of the Austrian Federal Government in order to make them available to a broad and interested public.

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